

Does REDD+ policy process advance Free Prior and Informed Consent's agenda in the Congo Basin countries?

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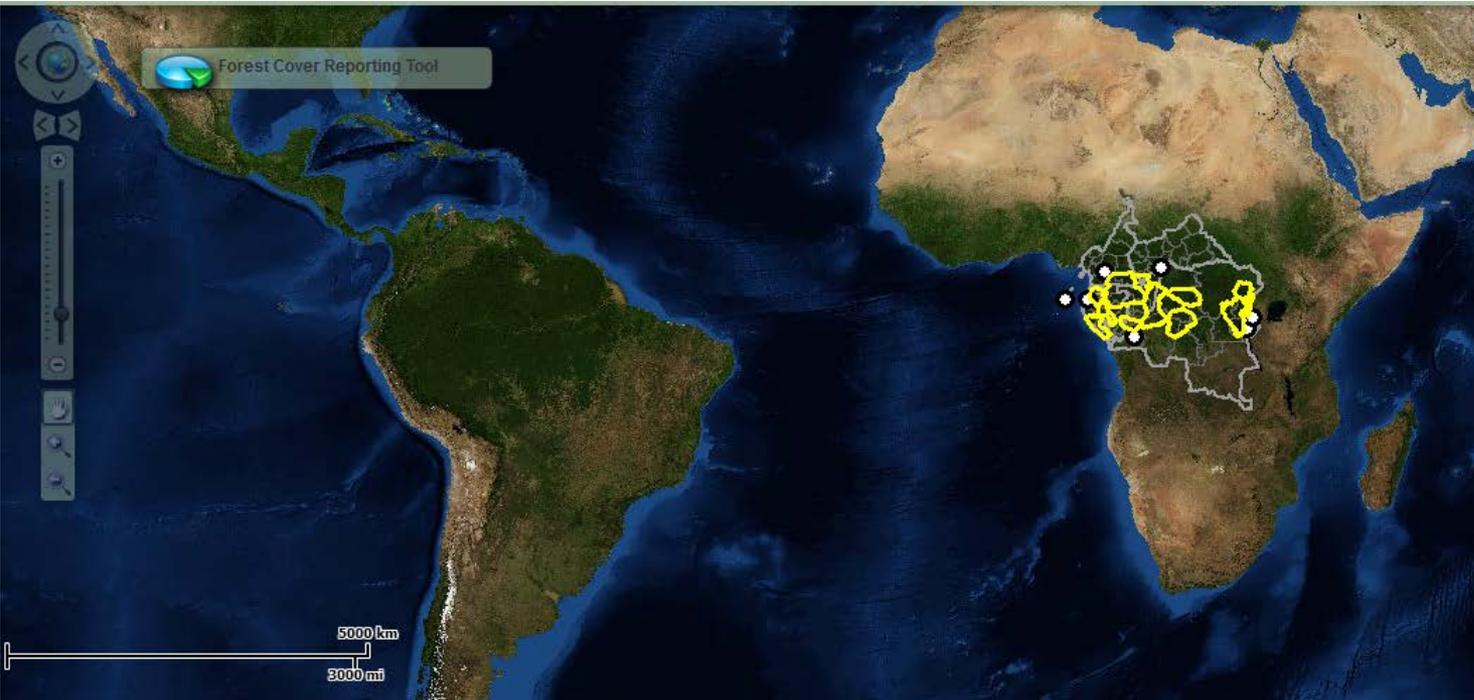
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Outline

- Overview: Congo basin forest, people, REDD+ process and FPIC components
- Legislations of countries and the involvement/engagement of local and indigenous communities
- FPIC trials and pending questions related to local social contexts
- Consideration of FPIC in countries REDD+ readiness process (SESA/ESMF)
- Initiatives aiming at establishing specific FPIC's procedures for REDD+
- Lessons learned and challenges ahead FPIC's implementation.

Congo Basin forest and its people

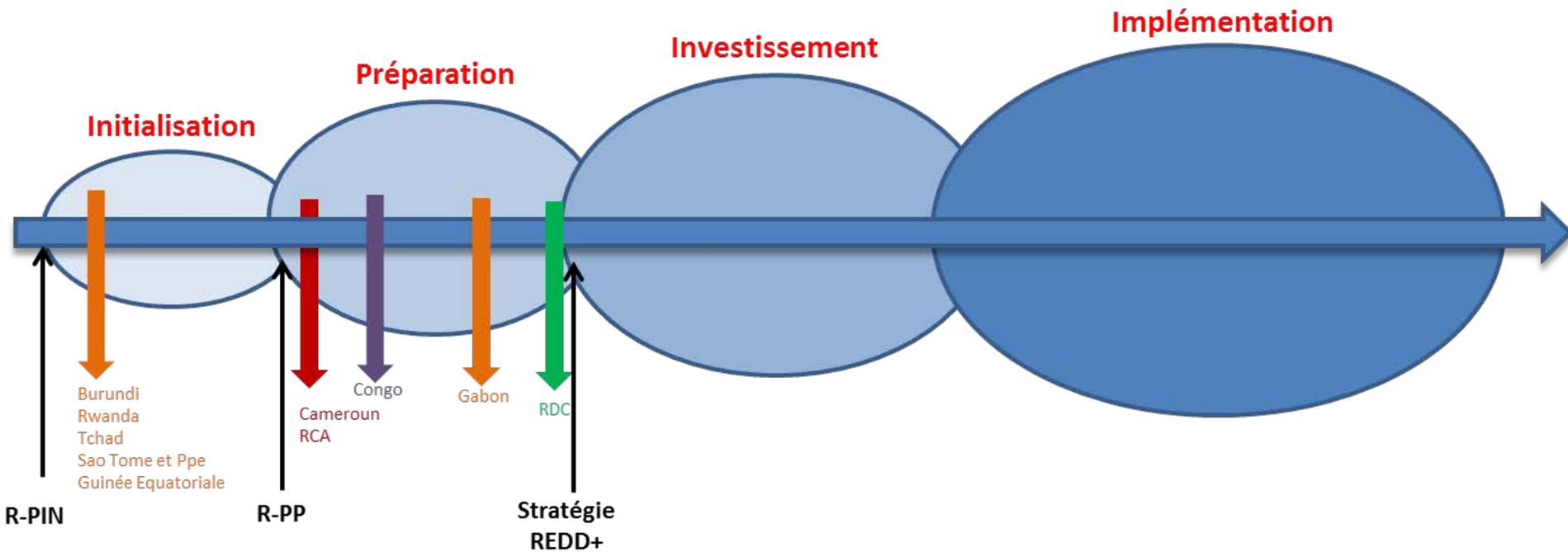


- 200 Million ha of forest
- Six countries:
 - DRC
 - Gabon
 - Congo
 - Cameroon
 - Equatorial Guinea
 - CAR
- 60% of forest in DRC

Source: CARPE Mapper : <http://congo.iluci.org/carpemapper/>

- More than 30 million people (around 150 ethnic groups) live in the forest
- Pygmies hunter-gatherers have existed for 20 to 25000 years
- Bantu population (agriculturist) penetrated the forest approximately 4,000 BC

Progress of Congo basin countries in the REDD+ process



Source: Randrianarison et al. 2013

- DRC is the most advanced thanks to support from FCPF, UN-REDD, FIP, etc.

Highlights of FPIC's core elements

Free:

- Consent given voluntarily without coercion, intimidation or manipulation
- Process is self-directed by the community

Prior:

- Timing: time is provided to understand, access, and analyze information on the proposed activity.
- Ownership of the decision-making timeline (customary practices of IP)

Informed:

- Characteristics of information provision: accessible, clear, consistent, accurate, constant, and transparent
- Complete and objective
- Provided on an ongoing and continuous basis
- Delivered in appropriate language and culturally appropriate format and through culturally appropriate personnel, in culturally appropriate locations

Consent:

- Collective decision determined by the affected peoples (e.g. consensus, majority, etc.) in accordance with their own customs and traditions
- Decision to give (to say “Yes”) or to withhold (to say “No”) at any stage of the consultation process

(See UNPFII 2005, UN-REDD, 2013)

Overview of IPs' engagement in forestry and related policies (1)

- Legislations show progress with regard to recognition to engage local and indigenous communities in forest and related sectors.
- Some examples:
 - Guidelines on the Participation of Local Communities and Indigenous Peoples and NGOs in Sustainable Forest Management in Central Africa (adopted in January 2011) – the guideline mentions FPIC
 - Central African Republic is the only African country which has ratified the ILO Convention 169 concerning Indigenous and Tribal Peoples (2010)
 - Republic of Congo promulgated a law pertaining to promoting and protecting the rights of Indigenous people (February 2011)

Overview of IPs' engagement in forestry and related policies (2)

- Engagement concepts identified in some domestic legislation include issues such as:
 - Consultation of local and indigenous communities: e.g. 'prior consultation' for forest land gazetting and for the development of forest management plans (Cameroon, DRC)
 - Public enquiry: Process of 'public enquiry' carried out prior attributing land or forest concession (DRC).
 - Environmental and social impact assessment: condition for obtaining agricultural concession (DRC)
 - Cahier de charge system: social responsibility contracts obligating companies to in-kind and cash transfers to local communities (DRC, Cameroon)

Overview of IPs' engagement in forestry and related policies (3)

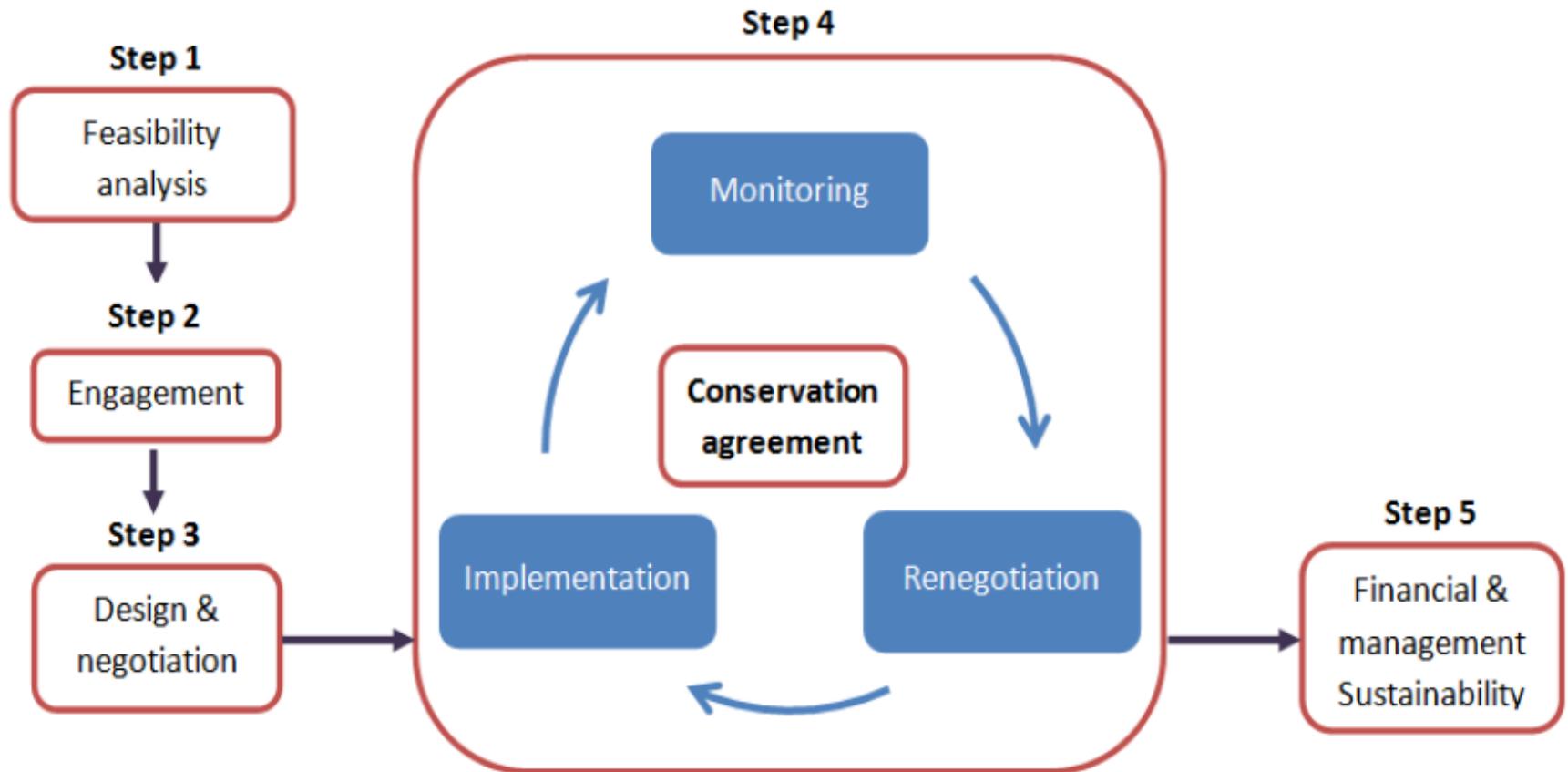
- ✓ Enforcement of provisions on engagement of local and indigenous communities is fraught with many difficulties.
- ✓ Though Congo basin countries are party to most regional and international conventions protecting FPIC, their domestic judicial systems do not contain any measures about FPIC and do not acknowledge it.

FPIC experiments identified in the region (1)

- **Case 1: Feasibility study conducted in five major forest concessions in the Democratic Republic of Congo (DRC), the Republic of Congo and Gabon (Freeman et al. 2009).**
 - The study aimed at assessing how operational is the implementation of Principles 2 (tenure and use rights and responsibilities) and 3 (indigenous people's rights) of the FSC standard in forest concessions.
 - These principles demand the gaining of participation and consent of local people in forest management, as a requirement of FSC certification.
 - FSC criteria are used as a working definition in the study to uncover the problems and constraints in the companies' practice should they wish to apply a FPIC approach.
 - While leaving the local population room to refuse the company's exploitation or to negotiate with it on the management of forest resources may seem clear on paper, in practice a lot of problems may arise, many of which are specific to the local social context.

FPIC experiments identified in the region (2)

- **Case 2:FPIC in the Conservation Agreements within the framework of Conservation International's Bonobo Conservation Concession (Equateur, DRC) (Niessen 2013)**



FPIC experiments identified in the region (3)

- CI's Conservation Stewards Program has developed a Conservation Agreement model which involves negotiated transactions with communities who undertake jointly defined conservation commitments in return for incentive packages designed through participatory processes.
- The core elements of the CA include: Parties and their rights and responsibilities, conservation commitments, benefits, sanction and compliance and performance monitoring protocol.
- CI believes that this model embodies the principle of FPIC, as it requires explicit community approval to proceed, based on extensive engagement and communication efforts and a central role for community-defined needs and priorities.

FPIC experiments identified in the region (4)

- The two cases highlight some lessons and implementation challenges:
 - ***Social organization and leadership***: How to define a community? Who can provide consent on behalf of the community? How to ensure complete consultation among a mobile hunter-gatherer population? How to ensure that decision-makers reflect community-wide perspectives? To what degree are vulnerable or marginalized groups in the community involved in the consent process? Should consent be unanimous, is a simple majority sufficient, or is there some other threshold for adequacy of community support?
 - ***Information***: What is the threshold at which communities should be informed in order to make a free decision regarding its consent? How should a group proceed to know that it possess sufficient information to make an informed decision? Should all members in the community have the same level of information? What level of details and complexity could we reasonably expect? How should the arbitration on this matter be made? Who should check that community's understanding has reached the expected level?
 - ***Consent***: How to verify and document broad-based community consent in way that is transparent, legitimate and credible?

How far the REDD+ readiness does involve FPIC? (1)

- **Relevance of the SESA/ESMF process with regard to FPIC:**
 - FCPF requires that a Strategic Environmental Social Assessment (SESA) is undertaken during the implementation of the various R-PP components and (FCPF and UN-REDD, 2010).
 - SESA: “A range of analytical and participatory approaches that aim to integrate environmental and social considerations into policies, plans and programs (PPPs) and evaluate the inter linkages with economic, political, and institutional considerations”.
 - The SESA process leads the drafting of an Environmental and Social Management Framework (ESMF).
 - ESMF provides the framework for avoiding, mitigating, and managing environmental and social risks of selected REDD-plus strategy options.
 - The SESA/ESMF process involves 12 steps:
 - which include among others a mechanism for awareness raising, communication and consultation, ranking of DD drivers according to social and environmental issues, impacts and priorities and; improved REDD+ strategic options.

How far the REDD+ readiness does involve FPIC? (2)

- ✓ Among the Congo Basin countries, DRC is the only country which has already launched a SESA/ESMF process, but which still to be complete.
- ✓ A preliminary version of national REDD+ environmental and social standards was validated (November 21, 2011), but are still broad and general. The testing of these standards at the project level and their contextualization are still expected (Hoefsloot, 2012).
- ✓ Though the SESA/ESMF process is based on UNDRIPs commitments (including the right for self determination), SESA/ESMF do not seek 'consent' of IPs (e.g. regarding its scope and content):
 - SESA/ESMF provides information on how the safeguards are being addressed, based on consultation and various participatory approaches, but do not seek 'consent' of IPs.

Ongoing initiatives to establish specific FPIC to REDD+ (1)

- **DRC: The Forest Dialogue initiative on FPIC:**
 - Hundred people participated in The Forest Dialogue organized in May 2012 by FPP, MECNT and SIDA was a framework to reflect on how to enforce FPIC in DRC (Kipalu 2013).
 - The dialogue focused on how the right to FPIC should be respected in national programs aiming at reducing emissions from DD. DRC is entering in the REDD+ investment phase which underlines the need to include FPIC approach.
 - The process put in place a network of professionals in DRC in order to share lessons learned from FPIC implementation and to build synergy of action and partnership to support the national process on FPIC. It also designed a road map.

Ongoing initiatives to establish specific FPIC to REDD+ (2)

- Appreciation of participants:
 - An official: *'... reforms are necessary in DRC and FPIC should be integrated in the second phase of REDD+'*
 - An IP representative: *'... we are ready to take part in effort to preserve forest, but this should respect our rights to FPIC and our effective involvement in the designing, implementation and monitoring of programs'*
- One output:
 - The draft national REDD+ strategy developed in 2012 (DRC, 2012) recognizes and mentions the right to FPIC in various steps of REDD+ implementation without giving details on operational procedures.

Ongoing initiatives to establish specific FPIC to REDD+ (3)

- **Cameroon: FPIC guidelines development launched by GIZ, WWF and CED.**
 - The process aims at developing national guidelines on FPIC for REDD+. An informal draft document is under discussion among GIZ, WWF and CED (Carodenuto, S., J. Kamga and R. Tchifofo. 2013).
 - 29/08/2013: A first meeting involving various stakeholders was organized to inform stakeholders on the process and to discuss concrete indicators which could be used to verify compliance of REDD+ projects to FPIC requirements

Ongoing initiatives to establish specific FPIC to REDD+ (4)

- ✓ In DRC, discussions on FPIC procedures could be considered as advanced compared to other countries:
 - ✓ But, the delay in establishing these procedures does not stop expansion of REDD+ pilot projects on the field.
 - ✓ A FPP study identified 20 ongoing projects: the majority is developed without informing or involving communities living in the vicinity of projects (Kipalu 2013).
- ✓ Cameroon is still at the early stage of designing its guidelines for FPIC in REDD+ process

Lessons and challenges ahead (1)

- ✓ Sustainable funding for FPIC experimentation and implementation:
 - ✓ Are budgets for engaging stakeholders (including designing and implementing FPIC) included in R-PPs substantial enough to fund sustainable process?
 - ✓ How to make sure contractual and financial commitments are respected?

Lessons and challenges ahead (2)

- ✓ The REDD+ policy process has revamped FPIC's agenda in the Congo Basin. But, countries do have a long history of successful national and sub-national consensus-building or consent practices (see also Diamond 2013).
 - ✓ There are still many concrete and contextual questions to answer (see Freeman et al. 2009, Niesten 2013, Karpe 2013:59).
 - ✓ Providing appropriate answers to these questions requires strong commitment from States and implies taking time to go through massive and genuine action research processes, to develop national guidelines, to provide interpretations, to test usability and improve the content and procedure of FPIC
- ✓ Enforcing the right to FPIC raises many questions which demand official interpretation. This implies a need to put in place FPIC interpretation organs/institutions (Karpe 2013)

Lessons and challenges ahead (3)

- ✓ Indigenous People from Central Africa:
 - ✓ States are still reluctant to face the issues of 'self determination' of 'Indigenous people'. Their attitude is due to misunderstanding of 'self determination' and wrong interpretation of 'Indigenous people'. It is therefore necessary to find innovative way to contextualize these concepts in Central Africa.
 - ✓ Some scholars proposed some way out: to build on less sensitive concepts such as 'vulnerable and disadvantaged group' and to emphasize aspect such as 'auto-definition', 'special attachment to culture', 'marginalization' (Karpe 2008, 2013).
- ✓ In order for FPIC to really play its expected role, right to FPIC should not be assimilated to other rights (such as right to participate). It is therefore necessary to organize and coordinate the FPIC enforcement with other rights to avoid contradictions (Karpe 2013).

Lessons and challenges ahead (4)

- ✓ Weak capacities of countries to provide appropriate answers to questions raised:
 - ✓ Too many foreign actors are involved in the definition of policy processes (including FPIC)
 - ✓ It is difficult for countries to follow the pace and rhythm of the REDD+ policy process. This does not enable their sufficient ownership of the processes and creates the risk of putting in place policies that ultimately will not benefit the country and all the people

References

- **UN-REDD, 2013.** Guidelines on Free, Prior and Informed Consent (FPIC), UN-REDD Programme Secretariat, Geneva, Switzerland
- **UN Permanent Forum on Indigenous Issues (UNPFII). 2005.** Report of the International *Workshop on Methodologies Regarding Free Prior and Informed Consent and Indigenous Peoples*. Document E/C.19/2005/3, submitted to the Fourth Session of UNPFII, 16–17 May
- **Freeman, L., J. Lewis & S. Borreill-Freeman with C. Wiedmer, J. Carter, N. Clot & B. Tchoumba, 2009.** Free, Prior and Informed Consent: Implications for Sustainable Forest Management in the Congo Basin. Pages 319-334. in German, A.L., Karsenty, A. et Tiani, A-M. (eds.). *Governing Africa's Forests in a Globalized World*. CIFOR, Bogor, Indonesia.
- **Niesten, E.T. 2013.** Conservation Agreements and Free, Prior and Informed Consent. *FOATAS No 1*: 103-111
- **FCPF and UN-REDD, 2010.** Readiness Preparation Proposal (R-PP) Working Draft Version 5 (revised), Forest Carbon Partnership Facility (FCPF) and United Nations REDD Programme (UN-REDD).
- **Hoefsloot, H. 2012.** Evaluation à mi-parcours indépendante du processus national de préparation à la REDD+ en RDC, Kinshasa/Arnhem.
- **Kipalu, P. 2013.** Le consentement libre, préalable et informé (CLIP) des communautés dans le processus de la Réduction des Emissions dues à la déforestation et à la dégradation des forêts (REDD+) en République Démocratique du Congo (RDC). *FOATAS N° 1* : 69-87.
- **DRC, 2012.** Stratégie-cadre nationale REDD de la République Démocratique du Congo. Version 3. FCPF and UN-REDD.
- **Carodenuto, S., J. Kamga and R. Tchiofo. 2013.** Document d'orientation pour le développement d'un guide national de consentement libre, informé et préalable (CLIP) pour la REDD+ au Cameroun. Draft document. GIZ, WWF and CED.
- **Diamond, N.K., 2013.** Readiness to Engage: Stakeholder Experiences for REDD+. FCMC and USAID.
- **Karpe, P., 2008.** Le droit des collectivités autochtones, L'Harmattan, Paris.
- **Karpe, P., 2013.** Le droit au consentement préalable libre et éclairé des collectivités autochtones en Afrique. *FOATAS No 1* : 51-68.
- **Karpe. 2013.** Atelier sur l'évaluation de la mise en œuvre des observations conclusives formulées par les organes de surveillance de traité de l'Etat du Cameroun pour une meilleure prise en compte des droits des peuples autochtones au Cameroun . CNUDHD-AC, Yaoundé, juin 2013
- **Karpe P, Randrianarison M, Guignier A, Bigombe P, Akwahneba G, Boutinot L. 2012.** REDD+ and the promotion of the rights of indigenous peoples in Cameroon: Analysis of the definition of "social and environmental standards. Conference on "Beyond carbon: ensuring justice and equity in REDD+ across levels of governance", 23-24 March 2012, St. Anne's College, Oxford, UK.
- **Randrianarison M., Dkamela G.P., Karpe P. 2013.** La REDD+ au Cameroun. *In press*



Thank you for your kind attention